

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING REQUEST FOR RECONSIDERATION
OF RULING DENYING MOTION FOR DISPUTE RESOLUTION**

This ruling is issued in response to the motion of 01 Communications, Inc. (01) for reconsideration of the Administrative Law Judge's (ALJ) ruling issued on December 1, 2005, denying the 01 motion, filed April 15, 2005, for dispute resolution with Verizon California Inc. (Verizon) pursuant to the process in Decision (D). 95-12-056. The ALJ ruling denied the motion to invoke the Commission's dispute resolution process, but concluded that parties' proper recourse was commercial arbitration to resolve the dispute.

The arguments presented by 01 for reconsideration have been reviewed, together with the response filed by Verizon. Based on that review, no convincing argument has been found to warrant reversal of the previous ruling. Therefore, the previous ALJ ruling, dated December 1, 2005, is hereby reaffirmed.

Background

01 and Verizon are telecommunications carriers operating in California that have interconnected their networks since 1999, allowing either carrier to pass telecommunications traffic from one carrier to the other. The 01 motion sought Commission involvement to resolve parties' dispute over the compensation that Verizon is obligated to pay to 01 for transporting and terminating "dial-up" Internet calls under an interconnection agreement executed in 1999 (the 1999 Agreement). The 1999 Agreement remained in effect until a new agreement became effective on August 15, 2003.

An ALJ ruling dated December 1, 2005, denied the 01 motion for dispute resolution, concluding that parties' proper recourse was to pursue dispute resolution through the process described in Section 42 of the 1999 Agreement, utilizing the Commercial Arbitration rules of the American Arbitration Association.

On December 15, 2005, 01 filed a motion for reconsideration of the ALJ's ruling, arguing that the ruling was inconsistent with an earlier ruling in Complaint Case (C.) 04-02-019, which rejected an argument that the existence of a mandatory arbitration clause in an interconnection agreement "outs" the Commission of jurisdiction over disputes arising under the agreement.

In a response on December 29, 2005, in opposition to the 01 motion for reconsideration, Verizon argued that 01's reliance on the ruling in C.04-02-019 as a standard is misplaced. Because parties reached a settlement in C.04-02-019, the Commission never approved the ALJ ruling cited by 01. Absent Commission approval, Verizon argues that the ALJ ruling has no precedential value as would a Commission decision.

Also, the facts of this case are not precisely the same as in C.04-02-019. For that reason, Verizon argues, the ALJ ruling in C.04-02-019 is not applicable precedent to the dispute at issue here. Verizon also provides citations to various court cases that have held that private arbitration was to be used where called for under applicable interconnection agreements.

Discussion

It is concluded that 01 has not made a persuasive argument justifying reversal of the prior ALJ ruling denying 01's motion for dispute resolution.

Consistent with prior cases cited by Verizon in its response, the carriers are bound by their contract calling for use of private arbitration to resolve contract disputes. The ruling made in C.04-02-019, as cited by 01, involved different considerations from those at issue here, and does not form a binding precedent for disposition of the instant dispute. In that case, the ALJ did not address the fundamental issue of whether a carrier may choose mediation over arbitration where the contract specifies arbitration as the sole remedy for dispute resolution under the agreement.

Instead, C.04-02-019 was a complaint involving allegations of multiple violations of state and federal law. The U.S. District Court has upheld the principle that state commissions may delegate future dispute resolution authority to private arbitrators when exercising their initial authority to approve interconnection agreements (ICAs) under Section 252 of the Telecommunications Act.¹

¹ 1998 U.S. Dist. LEXIS 17556, at *95-*98.

01 has not provided a compelling basis to reverse the prior ALJ ruling denying its motion seeking Commission involvement in resolving its ICA dispute with Verizon. The previous ALJ ruling denying the 01 motion therefore reached the appropriate outcome, consistent with past Commission actions dealing with similar issues. Accordingly, upon reconsideration, as discussed above, the prior ALJ ruling is upheld.

IT IS RULED that in response to 01's Motion for Reconsideration, the prior ALJ ruling denying the motion of 01 for expedited dispute resolution is upheld.

Dated February 23, 2006, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Request for Reconsideration of Ruling Denying Motion for Dispute Resolution on all parties of record in this proceeding or their attorneys of record.

Dated February 23, 2006, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

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